

810-6-5-.04.02 Seller's Responsibility to Collect County and Municipal Sales and Use Taxes.

(1) Scope. The provisions of this rule are limited to describing a business's obligation to collect and remit a local jurisdiction's sales or use tax, whether or not that business has a physical location in the state. The provisions of this rule have no bearing on a business's other local tax or fee obligations including specifically a local jurisdiction's business license tax. An obligation to collect and remit a local jurisdiction's sales or use tax under the provisions of this rule does not obligate the business to file a return for or pay any other local tax or fee. Likewise, this rule does not address sourcing issues associated with the determination of where tax is due or in which local jurisdiction tax is due. Sourcing issues are controlled by the passage of title from seller to customer and are not addressed herein. The provisions of this rule do not apply to the sale of automobiles, motorcycles, trucks, truck trailers or semitrailers in transactions governed by Section 40-23-2(4) or 40-23-102, Code of Alabama 1975, and Rule 810-6-3-.42.02. (Nonresidents, Sales to), 810-6-3-.42.03. (Sales of Certain Automotive Vehicles to Nonresidents for First Use and Registration or Titling Outside Alabama), or 810-6-3-.03.02. (Automotive Vehicles, Certificate of Exemption/Out-Of-State Delivery Form).

(2) Under the provisions of Sections 11-51-200 and 11-51-202, Code of Alabama 1975, as amended, the governing body of any municipality in the state may provide by ordinance for the levy of municipal sales and use taxes, parallel to the state levy of sales and use taxes. Under the provisions of Sections 11-3-11.2 and 40-12-4, Code of Alabama 1975, as amended, or any general, special or local enabling act of the Legislature, the governing body of any county in the state may provide for the levy of county sales and use taxes, parallel to the state levy of sales and use tax except in limited instances where a contrary local sales and use tax act was in effect on February 25, 1997. As used in this rule, the term "local jurisdiction" means a municipality, special tax district, police jurisdiction or county in Alabama.

(3) The threshold applicable for determining whether a seller is obligated to collect and remit the state sales or use tax associated with interstate transactions shall also be applied by sellers to determine whether the seller is obligated to collect and remit local sales or use tax by examining the contacts the seller has within each local jurisdiction where local sales or use tax is due. Except as described in the following paragraphs, any seller responsible for collecting and remitting state sales or use tax with respect to a particular retail sales transaction or taxable use must collect and remit the corresponding sales or use tax for the appropriate local jurisdiction(s) with respect to the transaction or use. A seller may only avoid the responsibility for collecting and remitting a local jurisdiction's sales or use tax when the seller lacks physical presence within the local jurisdiction that would be sufficient to create an obligation to collect and remit state sales or use tax if the sales transaction or use in question was an interstate transaction.

(4) For purposes of determining whether the seller lacks sufficient physical presence within the local jurisdiction to create an obligation to collect and remit the local jurisdiction's sales or use tax, the seller should refer to and must apply the provisions of Rule 810-6-2-.90.01 entitled "Seller's Responsibility to Collect and Pay State Sales Tax and Seller's Use Tax."

(5) The following are intended to provide examples of the type of activity that would or would not establish a taxable presence with a local jurisdiction. These examples do not address every business activity conducted by a seller that could establish a taxable presence and impose on the seller the requirement to collect the local tax.

(a) EXAMPLES:

1. Retailer A, a furniture store with its location in the City of Montgomery (Montgomery County), makes sales to customers in Auburn (Lee County) and delivers the furniture sold to Auburn customers into Auburn using its own delivery trucks and its own employees. Because Retailer A has a physical presence (delivery trucks and employees) in Auburn (Lee County) it is responsible for collecting and remitting the Auburn and Lee County sales taxes on its sales delivered into those localities.

2. Retailer B, a sporting goods store with its location in the City of Birmingham (Jefferson County), makes sales to customers in Gulf Shores (Baldwin County) and delivers the goods sold to Gulf Shores customers into Gulf Shores via UPS, a common carrier. Retailer B has no other contact with Gulf Shores or Baldwin County. Because Retailer B lacks a physical presence in Gulf Shores (Baldwin County) it is not responsible for collecting and remitting the Gulf Shores or Baldwin County sales tax on its sales delivered into those localities. However, the customer would be responsible for remitting any applicable use tax to Gulf Shores and Baldwin County.

3. Retailer C, a janitorial supply store with its location in the City of Mobile (Mobile County) and with salesmen soliciting sales in the City of Huntsville (Madison County), makes sales to Huntsville customers and delivers the supplies sold to Huntsville customers into Huntsville via UPS, a common carrier. Because Retailer C has a physical presence (salesmen) in Huntsville (Madison County), it is responsible for collecting and remitting the Huntsville and Madison County sales taxes on its sales delivered into those localities.

Note: State sales tax would still have to be collected and remitted in all examples.

(6) This rule shall apply to all transactions occurring on or after January 1, 2014.

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Authority: Sections 40-2A-7(a)(5), 40-23-2, 40-23-68, 11-51-180, 11-51-200
Code of Alabama 1975

History: New rule: Filed October 25, 2013, effective November 29, 2013.